

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

OHIO A. PHILIP RANDOLPH	:	
INSTITUTE, <i>et al.</i>	:	No. 1:18-cv-00357-TSB-KNM-MHW
	:	
Plaintiffs,	:	Judge Timothy S. Black
	:	Judge Karen Nelson Moore
v.	:	Judge Michael H. Watson
	:	Magistrate Judge Karen L. Litkovitz
RYAN SMITH, Speaker of the Ohio House	:	
Of Representatives, <i>et al.</i>	:	
	:	
Defendants.	:	

NON-WAIVER OF PRIVILEGE OR CLAWBACK AGREEMENT

Plaintiffs, Ohio A. Philip Randolph Institute, *et al.*, Defendants, Ryan Smith, *et al.*, and Intervenor, Steve Chabot, *et al.*, (collectively, the “Parties”) hereby agree and stipulate as follows:

The Parties are in the discovery phase of the above-captioned litigation. As such, the Parties have been producing various types of information, including electronically stored information (“ESI”). As a result, there is a risk of inadvertent disclosure of certain privileged and/or otherwise protected information.

The Rule 26(F) report of parties, filed on July 6, 2018; a Stipulation and Protective Order, filed on August 9, 2018; and the Agreed ESI Protocol Order, filed on July 9, 2018, outline non-waiver and clawback procedures that apply to productions by the parties to this litigation. The Parties acknowledge that non-party recipients of subpoenas are subject to the same risks of inadvertent disclosure of certain privileged and/or otherwise protected information. Non-party recipients of subpoenas, including Armond Budish, Christopher Glassburn, Amanda Hoyt, Keary

McCarthy, Randall Routt and Matthew Szollosi (collectively “Non-Party Recipients of Subpoenas”), seek protection from these risks.

Accordingly, pursuant to Fed. R. Civ. P. 45(D)(2)(b), the Parties agree to this non-waiver or “clawback” agreement, which shall apply to the Non-Party Recipients of Subpoenas. The Parties adopt by reference the definitions of “attorney-client privilege” and “work-product protection” as set forth in Fed. R. Evid. 502, and further adopt by reference the “clawback” provisions of Fed.R.Civ.P. 45(d)(2)(b) which apply to subpoenas.

For purposes of production, legislative privilege will be waived by the Non-Party Recipients of Subpoenas specifically identified herein, however such materials may not be used in any context outside of the above-captioned matter and will be permanently destroyed 30 days following final resolution of the above-captioned case.

A Non-Party who does not intend to waive the privilege(s) or protection(s) associated with a document or ESI, and yet inadvertently produces such document or information, may, immediately after discovering inadvertent production, notify the opposing Parties that such production was inadvertent and should have been withheld, and amend its discovery response to provide for the return of said document or information. The opposing Parties must then promptly return the document or information in question and any copies, both paper and electronic, to the producing Non-Party, and further must permanently destroy any remaining electronic version of said document. All Parties hereby acknowledge that the requesting Party does not waive any right it has or may have to challenge the producing Non-Party’s assertion of the privilege or protection asserted and to request discovery of said document pursuant to an order of the Court.

APPROVED & AGREED:

/s/Freda Levenson

Freda Levenson (0045916)
ACLU of Ohio
4506 Chester Avenue
Cleveland, OH 44103
flevenson@acluohio.org

Robert Fram (126750)
rfram@cov.com

Tiffany Alora Thomas
athomas@aclu.org

Michael Baker (77071)
mbaker@cov.com

Theresa Lee
tlee@aclu.org

Counsel for Plaintiffs

/s/Patrick T. Lewis

Patrick T. Lewis (0078314)
Baker & Hostetler LLP
Key Tower
127 Public Square, Suite 2000
Cleveland, OH 44114
plewis@bakerlaw.com

Robert J. Tucker (0082205)
rtucker@bakerlaw.com

Erika Dackin Prouty (0095821)
eprouthy@bakerlaw.com

Counsel for Intervenor

/s/Steven T. Voigt

Steven T. Voigt (0092879)
Ohio Attorney General's Office
Constitutional Offices Section
30 E. Broad Street, 16th Floor
Columbus, OH 43215
Steven.voigt@ohioattorneygeneral.gov

Nicole M. Koppitch (0082129)
Nicole.koppitch@ohioattorneygeneral.gov

Counsel for Defendants

/s/Phillip J. Strach

Phillip J. Strach (29456)
Ogletree, Deakins, Nash, Smoak & Stewart,
P.C.
2301 Sugar Bush Road, Suite 600
Raleigh, NC 27612
Phillip.Strach@ogletreedeakins.com

Michael D. McKnight (36932)
Michael.mcknight@ogletreedeakins.com

Counsel for Defendants Smith and Obhof

MICHAEL DeWINE
Attorney General of Ohio

/s/ David A. Oppenheimer
DAVID A. OPPENHEIMER (0063193)
Principal Assistant Attorney General
Civil Rights Section
615 W. Superior Ave., 11th Floor
Cleveland, Ohio 44113
(216) 787-4154
(866) 401-2832 (facsimile)
david.oppenheimer@ohioattorneygeneral.gov
Counsel for Non-Party Witnesses Budish and Glassner

IT IS HEREBY ORDERED, that the above Non-Waiver of Privilege or Clawback Agreement shall stand as an Order of this Court.

11/27/18
DATE

Timothy S. Black
THE HONORABLE TIMOTHY S. BLACK
U.S. District Court Judge